



Bail Slip

Appellant/Accused namely Charles was released on Bail as per order of this Court dated 03/04/2018 made in CrI.MP.(MD).NO.2678 of 2018 in CrI.A. (MD) NO.164 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2020

CORAM

**THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

CRL.A (MD) No.164 of 2018

Charles

.. Appellant/Accused No.1

v.

State

Rep. by the Inspector of Police
Aralvaimozhi Police Station
Kanyakumari District
(Crime No.218/2009)

.. Respondent/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the Principal Sessions Judge, Kanyakumari in S.C.No.76 of 2010 dated 06.02.2018.

For Appellant : Mr.Veera Kathiravan
Senior Counsel
for Mr.R.Alagumani

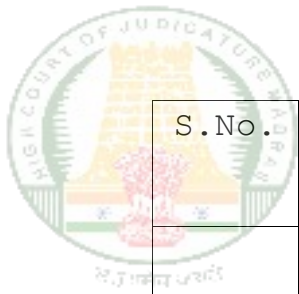
For Respondents : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

**(Judgment of the Court was delivered by
B.PUGALENDHI, J.)**

This appellant/first accused along with three others have been charged for the offence under Sections 120(B) and 302 IPC in Spl.S.C.No.15 of 2018 on the file of the Sessions Court, Kanyakumari District at Nagercoil and the trial Court, by judgment dated 06.02.2018, while acquitting A-3 and A-4, convicted and sentenced

<https://hdsesapp01.judn/hdses/As1> and A-2 as follows:



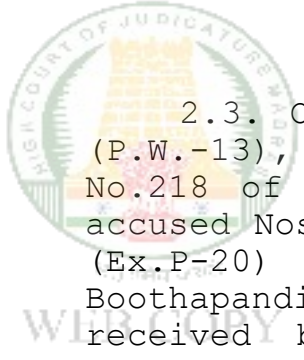
S.No.	Rank of the Accused	Offences for which convicted	Sentence
1	A-1 & A-2	302 IPC	To undergo imprisonment for life and to pay a fine of Rs.1,000/- (Rupees one thousand only) each, in default, to undergo simple imprisonment for one year

Challenging the said conviction and sentence, the appellant/accused No.1 is before this Court with this appeal.

2. The brief facts of the prosecution case in nutshell is as follows:

2.1. One Krishnaperumal set the law in motion by lodging the complaint (Ex.P-19) and he is the maternal Uncle of the deceased Nagaraj. The mother of the said Nagaraj died long back and the deceased was in the custody of the defacto complainant Krishnaperumal. The deceased Nagaraj was also a friend of one Vettu Murugan @ Arumugam, who was running a petty shop near to the shop of this appellant / first accused. The electricity connection for the appellant's shop was taken from the Arumugam Shop and all of a sudden, Arumugam disconnected electricity supply to the appellant's shop, which leads to a dispute between Arumugam and the appellant. At the instigation of Arumugam, the deceased Nagaraj assaulted the appellant with an Aruval on 24.06.2009 and caused a grievous injury and on account of which, a case was registered as against the deceased Nagaraj on the file of Aralvaimozhi Police Station for the offence under Section 307 IPC. In view of the registration of the case against him, the deceased Nagaraj was absconding and the defacto complainant Krishnaperumal supported him by giving some money.

2.2. On the date of occurrence, on 05.07.2009, Krishnaperumal along with his son Sudhan (P.W.-1) went to Beemanagar cremation yard to meet the deceased and to give him some money. When they were talking in front of the graveyard, this appellant, along with the second accused, came in a TATA SUMO car bearing registration No.TN41 D5499 to the place of occurrence. On seeing the accused, the deceased Nagaraj, in order to escape from them, ran inside the graveyard. But the second accused caught hold of him and therefore, the deceased fell down and when he attempted to get up, this appellant / first accused attacked him indiscriminately with an Aruval on his head and neck. After the occurrence, the accused fled away from the place of occurrence and thereafter, Krishnaperumal went to Aralvaimozhi Police Station and lodged the complaint (Ex.P.-19).



2.3. On receipt of the complaint, the Sub-Inspector of Police (P.W.-13), Aralvaimozhi Police Station, registered a case in Crime No.218 of 2009 on 06.07.2009 at about 03.00 a.m. as against the accused Nos.1 and 2 for the offence under Section 302 IPC. The FIR (Ex.P-20) was also sent to the Judicial Magistrate Court, Boothapandi through the Head Constable (P.W.-11) and the same was received by the learned Judicial Magistrate, Boothapandi, on 06.07.2009 at about 12.05 p.m.

2.4. The Inspector of Police, Aralvaimozhi Police Station (P.W.-15) on receipt of the case in Crime No.218 of 2009 went to the place of occurrence on 06.07.2009 at about 00.30 hrs. and prepared an observation mahazar (Ex.P-1) and a rough sketch (Ex.P-24) in the presence of Nagarajan (P.W.-2) and one Boopalan. He also recovered a bloodstained gold flake cigarette box (M.O.-4), earth with and without bloodstains (M.O.-6 and M.O.-7 respectively) and cement mortars with and without bloodstains (M.O.-8 and 9 respectively) and two pairs of beedi (M.O.-10) from the place of occurrence in the presence of the said witnesses. He conducted inquest over the body of the deceased in the Government Hospital, Asaripallam on 06.07.2009 at about 09.30 a.m. and the inquest report is marked as Ex.P-25. Then, he forwarded the dead body for autopsy to the Government Hospital, Asaripallam through the Constable (P.W.-9).

2.5. Dr.Velmurugan of Kanyakumari Government Medical College Hospital (P.W.-12) conducted autopsy on 06.07.2009 at about 2.45 p.m. and he noted down the following external injuries:

"1. 7x3xVisceral depth horizontal cut injury seen over the front of neck. It is 8 cm below the symphysis menti . On examination the underlying muscles, vessels, nerves, windpipe and feedpipe out at that sites.

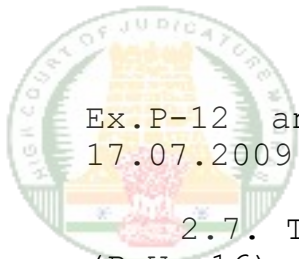
2. 9 x 2 x bone deep horizontal cut injury seen over the right side of back of head just closed to the occipital region.

3. 17 x 5 cm bone deep horizontal cut injury seen over the back of right side of neck seen 2 cm below the previous injury.

On examination, the underlying muscles, vessels and nerves out at that sites."

He gave his final opinion that the deceased would appear to have died of shock and hemorrhage due to cut injuries to the neck. The postmortem certificate is marked as Ex.P-15.

2.6. On 07.07.2009, at about 06.00 a.m., the Inspector of Police (P.W.-15) arrested this appellant / first accused near Kandamedu Colony Church in the presence of Kolappapillai (P.W.-10), Village Administrative Officer and the Village Assistant. The accused gave a confession statement and pursuant to his confession statement, the TATA Sumo car bearing registration No.TN41 D5499 (M.O.-1), a bill hook (M.O.-2) and bloodstained track suit and



Ex.P-12 and Ex.P13. He also arrested the fourth accused on 17.07.2009.

2.7. The further investigation was taken over by Thiru Srikanth (P.W.-16), Inspector of Police, from 20.09.2009 and he arrested the second accused on 22.11.2009 and recovered a bill hook, pursuant to his confession statement. He also examined the Doctor (P.W.-12), who conducted the autopsy and also collected the reports from the Forensic Laboratory and filed a final report as against the appellant and three others before the Judicial Magistrate Court, Boothapandi in P.R.C.No.2 of 2010 and the same was committed to the Court of Sessions, Kanyakumari at Nagercoil and was taken up for trial in S.C.No.76/2010.

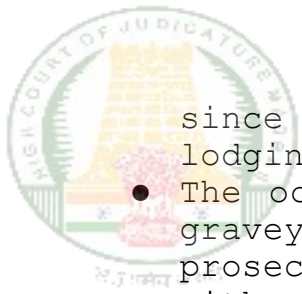
2.8. During the course of trial, 16 witnesses were examined on the side of the prosecution and 29 documents were marked, besides 23 material objects.

2.9. Except P.W.-1 and other official witnesses, all other witnesses were turned hostile and when the incriminating materials were put to the accused under Section 313 Cr.P.C., the accused have denied the same. They have not examined any witness on their side. In conclusion of the trial, the trial Court found the accused Nos.1 and 2 guilty and acquitted the accused Nos.3 and 4 as stated supra. As against the said conviction and sentence, the first accused alone is before this Court with this appeal.

3. Heard Mr.Veera Kathiravan, learned Senior Counsel for Mr.R.Alagumani, learned Counsel on record for the appellant and Mr.K.K.Ramakrishnan Additional Public Prosecutor for the respondent / State.

4. The learned Senior Counsel, in support of his case, made the following submissions:

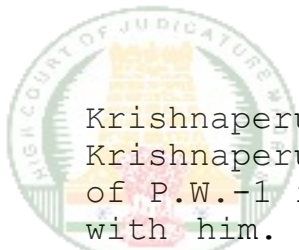
- The case of the prosecution is solely relied upon the evidence of P.W.-1 and his evidence is not trustworthy. However, the conviction was made based on his solitary evidence;
- There is an inordinate delay of 4 ½ hours in lodging the complaint and a further delay of 9 hours in the FIR reaching the Court. The occurrence was taken place on 05.07.2009 at about 10.30 p.m., and the complaint was lodged on 06.07.2009 at 03.00 a.m. But the FIR reached the Judicial Magistrate Court on 06.07.2009 at 12.05 p.m., with a delay of 9 hours. The delay has not been explained by the prosecution and the Head Constable, who submitted the FIR before the Court has stated that he received the FIR on 05.07.2009 at 10.30 p.m. itself, which would further demolish the case of the prosecution;
- P.W.-1 and his father Krishnaperumal were having mobile phones at the time of occurrence. But they did not take any attempt to inform the police through their mobile phones and the presence of PW1 in the place of occurrence is highly doubtful,



since he does not accompany his father Krishnaperumal, while lodging the complaint Ex.P.-1;

- The occurrence was taken place at about 10.30 p.m. inside the graveyard and the source of light was not established by the prosecution. According to P.W.-1, he witnessed the dead body with a torch light, whereas, during cross-examination, P.W.-1 would state that he witnessed the occurrence through a street light, which was 200 feet away from the place of occurrence. Though a reference was made in the rough sketch (Ex.P-24) regarding the presence of a lamp post, no person from the Electricity Department was examined to substantiate that there was an electric post near the place of occurrence and it was in use at the relevant point of time;
- According to the de-facto complainant Krishnaperumal, the first accused alone is said to have attacked the deceased with an Aruval and the second accused had caught hold of the deceased at the time of occurrence, whereas, P.W.-1 has attributed fatal overtact to the second accused also and therefore, he could not be an eye-witness to the occurrence;
- The learned Senior Counsel has also referred about the delay in P.W.-1's statement reaching the Court. P.W.-1 is shown as an eye-witness and he was examined by the Investigating Officer on 06.07.2009 on the date of the FIR, but his Sec.161(3) Cr.P.C. statement reached the Court only on 12.02.2010;
- The weapon (M.O.-2) recovered from the first accused is a Vettu Aruval, which is having a curve on its top. But the injuries on the body of the deceased are flat injuries and the postmortem Doctor (P.W.-12) admitted in his cross-examination that the injuries found on the deceased will not be possible through a weapon, which have a curve on its top and therefore, the medical evidence is not tallied with that of the oral evidence and moreover this evidence of the prosecution was not relied upon by the trial Court insofar as the accused Nos.3 and 4 are concerned and they have been acquitted from the charges during the trial and the benefit of doubt extended to the accused Nos.3 and 4 ought to have been extended to this appellant also.
- In support of his contention, the learned Senior Counsel has relied upon the following decision:
 - (i) **Venkatesan and others v. State reported in 2016 (2) MWN (Cr.) 546 (DB) ;**
 - (ii) **Surajit Sarkar v. State of West Bengal (2013) Crl.L.J. 1137 SC**
 - (iii) **Vadivelu Thevar and another v. the State of Madras (LNIND 1957 SC 41) .**

5. Per contra, the learned Additional Public Prosecutor would submit that though P.W.-1 is a solitary eye-witness, he has stated about the occurrence in a cogent and convincing manner and there is no reason to disbelieve his evidence. The defacto complainant



Krishnaperumal was not examined, since he died during the trial and Krishnaperumal in his complaint (Ex.P-1) stated about the presence of P.W.-1 in the place of occurrence at the time of occurrence along with him. Though there is a delay in lodging the FIR, the delay cannot be a material defect in this case as the occurrence place is 8 kms away from the police station and the occurrence was taken place at odd hours and therefore, there is a delay of 4 ½ hours in reporting the incident to the police. Similarly, the case was registered at 03.00 a.m. While so, the delay in FIR reaching the Court is also not fatal to the case of the prosecution. He would further submit that the evidence of P.W.-1 is further corroborated through the evidence of P.W.-10 Village Administrative Officer who speaks about the arrest and confession of the first accused and also the recovery of weapon M.O.-2 and the TATA Sumo car bearing registration No. TN41 D5499 M.O.-1. The Investigating Officer has also recovered the bloodstained clothes, a tracksuit and a T-shirt from the first accused pursuant to his confession statement and the presence of blood was also detected in those material objects, which were recovered from the accused. Though the other accused, namely, accused Nos.3 and 4 have been acquitted by the trial Court, the evidence of P.W.-1 and the recovery of material objects are clinching evidence available as against the appellant, the trial Court has rightly found this appellant guilty for the offence under Section 302 IPC. The accused No.2 was also convicted along with the appellant. However, he has not preferred any appeal against the said conviction. The learned Additional Public Prosecutor vehemently contended that the evidence of P.W.-1 is supported by the recovery of weapon M.Os-2 and 3 and therefore, the evidence of P.W.-1 cannot be brushed aside that his evidence cannot be trusted. The available evidence is sufficient to sustain the conviction and there is no reason to reverse the finding of the trial Court.

6. This Court paid its anxious consideration to the rival submissions made and also perused the available records.

7. The entire prosecution case rests upon the evidence of P.W.-1, the solitary eye-witness. It is well established rule of law that the Court is supposed to consider the quality of the evidence and not the quantity of the evidence in proving or disproving the fact.

8. In this regard, the Hon'ble Apex Court in **Vadivelu Thevar and Chinniah Servai v. The State of Madras (LNIND 1957 SC 41)**, has held as follows:

"The oral testimony in this context may be classified into three categories, namely, (i) wholly reliable; (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in arriving at a conclusion either way it may convict or may acquit on the testimony of a single witness, if

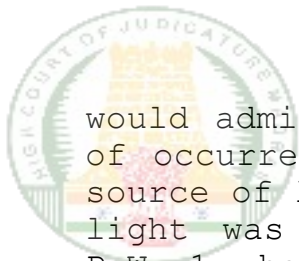
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it is found to be above reproach or suspicion of interestedness incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if Courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The Court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the Court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver, both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the Court to convict, if it is satisfied that the testimony of a single witness is entirely reliable."

9. The law was set into motion in this case by one Krishnaperumal, the de-facto complainant. But, he was not available during the trial and his son, namely, Sudhan was examined as P.W.-1, who is said to have accompanied his father Krishnaperumal during the occurrence. The occurrence was taken place on 05.07.2009 at 10.30 p.m. in Beemanagar graveyard. According to the Sub Inspector of Police (P.W.-13), the said Krishnaperumal lodged the complaint to him at about 03.00 a.m. on 06.07.2009 by a written complaint and on receipt of the complaint, he registered the case in Crime No.218 of 2009 as against the accused Nos.1 and 2. After registering the case, he forwarded the printed FIR (Ex.P-20) through the Constable (P.W.-11). P.W.-11 in his evidence would state that he received the printed FIR on 05.07.2009 at about 10.30 p.m. as an express FIR and handed over the same to the concerned Judicial Magistrate, Boothapandi on 06.07.2009. But Ex.P-20 printed FIR reached the concerned Judicial Magistrate, only on 06.07.2009 at about 12.05 p.m., with a delay of nine hours.

10. The occurrence was taken place in a graveyard in the night hours. The deceased, who was absconding in a criminal case, met his maternal uncle in the graveyard to get some money and at that time, the occurrence was taken place. In the complaint (Ex.P-1), the de-facto complainant Krishnaperumal states that he saw the dead body with the help of a torch light. Similarly, P.W.-15 in his evidence



would admit that he collected the materials objects from the place of occurrence with the help of a torch light and a gas light. The source of light was not mentioned in Ex.P-1. However, the source of light was substituted in the rough sketch Ex.P-24. According to P.W.-1, he witnessed the occurrence with the source of the street light. But to establish that there was a street light, the prosecution has not examined any personnel from the electricity Board that there was a street light near the place of occurrence and it was in usable condition on the relevant point of time. The dead body was found inside the grave yard and even according to P.W.-1, the occurrence was taken place inside the graveyard in the night hours and in the absence of any source of light, the prosecution has not sufficiently established their case.

11. Though the accused Nos.1 and 2 alone were referred in the complaint (Ex.P-1), subsequently, accused Nos.3 and 4 have been included as if they also accompanied the other accused and have intimidated the deceased.

12. Though P.W.-1 is said to have witnessed the occurrence along with his father Krishnaperumal, in the night hours at the grave yard, he did not accompany his father to the Police Station after the occurrence for lodging the complaint. This conduct of PW1 in not accompanying his father raises serious doubt on his presence in the place of occurrence at the time of occurrence.

13. According to the de-facto complainant Krishnaperumal, it was the first accused, who caused the cut injuries and the second accused caught hold of the deceased, whereas, P.W.-1 would say that the second accused was also armed with an Aruval and cut the deceased indiscriminately. P.W.-1 was not in a position to account for the injury on the deceased with the overtact of the accused and he did not identify the weapon used by the accused.

14. The first accused was arrested on 07.07.2009 and pursuant to his confession statement, a TATA Sumo Car and an aruval (M.O.-2) and bloodstained tracksuit and T shirt (M.Os.-15 and 16) were recovered through his confession in the presence of P.W.-10. P.W.-1 during his evidence could not identify the weapon M.Os.-2 and 3. M.O.-2 aruval, which was recovered from the first accused is a metal one, which is having curve on its top. The injuries, which could be possible through an aruval would be different from the injuries, which could be possible through vettu aruval. A suggestion was also made to the Doctor (P.W.-12), during his cross-examination and the Doctor admits in his evidence that the injuries found on the deceased are of flat injuries, which could not be mostly possible through a weapon, which is having a curve on its top.

15. Though P.W.-1 was examined as an eye-witness on the date of complaint on 06.07.2009, his statement recorded under Section 161(3) of the concerned Judicial Magistrate Court only on

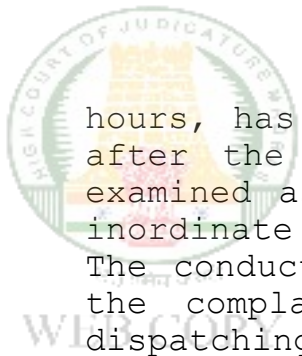


11.02.2010. In this context, it is useful to refer to the judgment passed by this Court in **Karunakaran Jabamani Nadar in re** reported in **1974 L.W. (Crl.)**, wherein, a Division Bench of this Court has dealt with the belated despatch of the original documents and held as follows:

"5..... it is imperative that the following documents should be despatched immediately, without any delay by the investigating officers to the Sub-Magistrate. The Station-house Officer should record the time of the actual despatch of the various documents in the various registers, particularly, the statement recorded u/s. 154 of the Code of Criminal Procedure. On receipt of the said documents, the Magistrate should initial the same, noting therein the time and date of the receipt of those documents. This would provide the only judicial safeguard against subsequent fabrication of such documents in grave crimes. Therefore, as the Manual of Instructions for the guidance of Magistrates in the Madras State does not contain any instructions to the Magistrates in this regard, we suggest that the same may be, brought up to date by incorporating in it the circulars which had been issued from time to time for the guidance of the Magistrates. The following are documents of special importance which, in our opinion, should be despatched by the investigating officers without any delay to the Magistrates, and they should bear the initials of the Magistrate with reference to both the time and date of their receipt:

1. The original report or complaint I under Section 154 of the Code of Criminal Procedure.
2. The printed form of the first information report prepared on the basis of the said report or complaint.
3. Inquest reports and statements of 'witnesses recorded during the inquest.
4. Memo sent by the officers to doctors for treating the injured victims who die in the hospital subsequently and the history of the case treatment.
5. Memo sent by the doctor to the police when a person with injuries is brought to the hospital, or the death memo sent by the doctor to the police on the death of the person admitted into hospital with injuries.
6. Observation mahazars and mahazars for the recovery of search lists and the statements given by the accused admissible under Section 27 of the Evidence Act, etc., prepared in the course of the investigation
7. The statements of witness recorded under Section 161 (3) of the code of Criminal Procedure.
8. Form No. 91 accompanied by material objects."

16. P.W.-1 is the solitary eye witness in this case and the entire prosecution rests on his evidence. Therefore, we have to analyze his evidence carefully. As discussed supra, P.W.-1, who is said to have accompanied his father to a grave yard in the night



hours, has not chosen to accompany his father to the Police Station after the occurrence while lodging the complaint. Though he was examined as an eye-witness on the date of occurrence, there is an inordinate delay of more than one year in dispatching the statement. The conduct of P.W.-1 in not accompanying his father while lodging the complaint after the occurrence, coupled with the delay in dispatching his statement to the Court and the delay in the First Information Report reaching the Court, raises serious doubt on the case of the prosecution. Moreover, the occurrence was taken place in a grave yard and the source of light has not been established.

17. In view of the aforesaid infirmities, we are of the considered opinion that it is not safe to sustain the conviction based on the solitary evidence of P.W.-1. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubt and the benefit of doubt is extended to the appellant / first accused.

18. In the result, the criminal appeal is allowed and the judgment of the trial court in S.C.No.76 of 2010, dated 06.02.2018 convicting the appellant under Section 302 IPC and sentencing him thereunder is set aside and he is acquitted of the charge levelled against him. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond shall stand terminated.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR/gk

To

- 1.The Principal Sessions Judge,
Kanyakumari
- 2.The Inspector of Police
Aralvaimozhi Police Station
Kanyakumari District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Judicial Magistrate,
Boothapandi,
Kanyakumari District.

<https://hcservices.courts.gov.in/hcservices/>



5.Do' Through The Chief Judicial Magistrate,
Kanyakumari District at Nagarcoil.

6.The Superintendent,
Central Prison,
Palayamkottai.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-7654[F] dated 21/02/2020)

**JUDGMENT MADE IN
CRIMINAL APPEAL No. (MD) .No.164 of 2018**

20.02.2020

_NR (22.06.2020) 11P 10C